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JAMES R. BROWNING, Clerk

Supreme Court of the United States

October Term, 1958

No. 330

THE ITEM COMPANY
Petitioner

versus

NEW ORLEANS NEWSPAPER GUILD
Respondent

PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioner seeks certiorari to review a judgment of the Court of Appeals for the Fifth Circuit, and in support of its petition respectfully shows:

OPINION BELOW AND JURISDICTION

The opinion of the Court of Appeals, rendered on June 26, 1958, and reported at ..... F2d ....., is printed in the appendix hereto. Rehearing was denied on July 30, 1958.

Jurisdiction of this court lies under 28 USC 1254 and 29 USC 185.

QUESTION PRESENTED

The novel question of federal statutory construction, and of jurisdiction of the federal courts, presented for review, is:

> Does a United States district court have jurisdiction, under section 301 of the Taft Hartley Act, of a labor organization's action to compel arbitration of dispute under a collective-bargaining agreement as to a grievance, which is not of interest to the union as such, but only to a single employee asserting a violation of his individual rights under a provision of the contract providing for arbitration of union grievances?

The importance of this question is pointed by the large number of cases[1] which have arisen in the wake of this court's decisions in *Westinghouse Salaried Employees vs*

[1] *Boston Mutual Life Insurance Co. vs Insurance Agents International Union*, 42 LRRM 2513 (CA 1-1958); *New Bedford Defense Products Division vs Local 1113*, 42 LRRM 2518 (CA 1-1958); *Local No. 149 vs General Electric Company*, 250 F2d 922, 927 (CA 1-1957), cert. den. 356 US 938; *Boston Printing Pressmen vs Potter Press*, 241 F2d 787 (CA 1-1957), cert. den. 355 US 817; *A. H. Bull vs Seafarers*, 250 F2d 326 (CA 2-1957), cert. den. 355 US 932; *A. H. Bull vs National Marine Eng. B. Ass'n*, 250 F2d 332, 338 (CA 2-1957); *Engineers Association vs Sperry*, 251 F2d 133 (CA 2-1957), cert. den. 356 US 932; *Monument Mills vs Textile Workers*, 152 FS 429, 430 (DC Mass-1957); *Railway Employees Union vs Continental Oil Co.*, 160 FS 723 (WD La.-1958); *Dairy, Bakery & Food Div. vs Grand Rapids Milk Div.*, 160 FS 34 (WD Mich.-1958); *Food Handlers vs Pluss Poultry*, 158 FS 650 (WD Ark.-1958); *Fruit & Vegetable Packers Union vs Torvig Scalander Fruit Co.*, 160 FS 683 (ED Wash.-1958); *Butte Miners Union vs Anaconda*, 159 FS 433 (DC Mont.-1958).

Westinghouse Electric Corporation,[2] and in *Textile Workers Union vs Lincoln Mills* and companion cases,[3] as well as by the numerous law journal comments thereon.[4]

Decision of this question necessitates reconciliation of the rules of the *Westinghouse* and *Lincoln Mills* cases; and it is submitted that the holding below involved a misapplication of those rules.

No conflict in holdings between circuits is involved. Indeed, the precise question herein presented has not been treated in the courts of appeals except by the court below in this case.

[2] 348 US 437.

[3] 353 US 448; *Goodall-Sanford vs Tetxile Workers*, 353 US 550; *General Electric vs Local 205*, 353 US 547.

[4] Bickel and Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case*, 71 Harv. L. Rev. 1; THE SUPREME COURT, 1956 TERM, 71 Harv. L. Rev. 85, 173; Bunn, *Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements*, 43 Va. L. Rev. 1247; Feinsinger, *Enforcement of Labor Agreements—A New Era in Collective Bargaining*, 43 Va. L. Rev. 1261; Summers, *Frankfurter Labor Law and the Judge's Function*, 67 Yale L. J. 266, 292; Pirsig, *Minnesota Uniform Arbitration Act and the Lincoln Mills Case*, 42 Minn. L. Rev. 333; Hanslowe, *Section 301 of Taft Hartley and the Brooding Omnipresence of William Winslow Crosskey*, 35 U. Det. L. J. 201; Jabczynski, *Section 301 of the Labor Management Relations Act and the Lincoln Mills Case*, 35 U. Det. L. J. 376; Milner, Case Note, *Collective Bargaining Contracts—Specific Performance*, 12 Sw. L. J. 123; McLaughlin, Case Note, *Specific Performance of Arbitration Agreements under Section* 301(a), 3 Vill. L. Rev. 109; *Enforcement of Contracts to Arbitrate Future Disputes*, 11 Vand. L. Rev. 243; Note, *Lincoln Mills: Labor Arbitration and Federal State Relations*, 57 Col. L. Rev. 1123; Miller, Comment, 18 Fed. B.J. 90; Meyer, Comment, 32 Tul. L. Rev. 447; Note, 43 Cornell L. Quar. 503; Case Note, 9 Syracuse L. Rev. 110; Weitzmann, Comment, 36 N. Car. L. Rev. 215; Note, 30 Rocky Mt. L. Rev. 62.

STATUTE INVOLVED

National Labor Relations Act, Section 301, 29 USC 185:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT OF THE CASE

Mr. Ewing Poteet was employed for about seven years, until February 20, 1957, as the music and drama critic

of The New Orleans Item, a daily afternoon newspaper published in the city of New Orleans, Louisiana, by petitioner (R 32). His employment was terminated on that date by letter from George Chaplin, editor of the newspaper (R 34).

Respondent is the collective-bargaining representative for petitioner's editorial employees.

Article 15 of the relevant collective bargaining agreement between petitioner and respondent provided that "there shall be no dismissals except for just and sufficient cause" (R 11-31).

On March 20, 1957, respondent filed with petitioner a written notice of grievance, protesting Mr. Poteet's discharge as violative of Article 15 (R 35). Five days later petitioner's general manager, Irvin M. Orner, and Mr. Chaplin met with a committee from respondent and explained the reasons for the discharge (R 32-33).

On May 25, 1957, petitioner advised respondent that, in its opinion, the question of its right to discharge Mr. Poteet was not an appropriate subject for arbitration, and that it was accordingly not required to arbitrate the matter (R 39).

On July 8, 1957, respondent filed this suit in the district court, seeking jurisdiction under section 301 of the Taft Hartley Act to compel petitioner to arbitrate Mr. Poteet's grievance.

On August 12, 1957, petitioner answered and moved for dismissal of the case, on the ground that respondent had failed to state a valid claim for relief within the jurisdiction of the district court, had no standing to sue, and was not the real party in interest.

On January 9, 1958, the district court rendered judgment, ordering petitioner to arbitrate. Appeal followed, and on June 26, 1958, the court of appeals affirmed the judgment of the district court.

ARGUMENT

The extent to which section 301 of the Taft Hartley Act has expanded the jurisdiction of the district courts to entertain suits by and against labor organizations is today's most important unsolved problem in the law of labor-management relations.

In addition to the case at bar in the Fifth Circuit, various aspects of this vexing and important question of federal jurisdiction have been considered by the district courts and courts of appeal in five other circuits, since the decisions of this court a year ago in *Textile Workers vs Lincoln Mills* and companion cases.[5]

That facet of this over-all question which concerns the right of a union to compel arbitration, under a collective-bargaining agreement, of a dispute as to a grievance primarily of interest to a single employee, asserting a violation of his individual rights, is of particular importance

[5] See footnote 3, supra.

This question, which is the crux of this case, brings into focus just what was and what was not decided in *Textile Workers vs Lincoln Mills* and companion cases, and necessitates fixing the boundary between the rule of those cases and the rule of *Westinghouse Salaried Employees vs Westinghouse Electric Company*.

The decisions in the *Lincoln Mills* and companion cases laid to rest the question of whether the district courts have jurisdiction to compel arbitration, under section 301, of a grievance involving contractual obligations running to a union.

This court, however, did not compel arbitration in *General Electric Company vs Local 205*, the only case in which it has thus far been presented with a demand to arbitrate the propriety of the discharge of an individual from employment.[6]

In the *General Electric* case, the decision of the Court of Appeals for the First Circuit was affirmed.[7] That court had remanded the matter to the district court for a determination of "the question of the arbitrability of the two grievances at issue".[7]

The district court had dismissed the suit of the union to compel arbitration on the over-all ground that the Norris-LaGuardia Act barred injunctive relief in such cases.[8]

[6] 353 US 547.
[7] 233 F2d 85, 101 (CA 1-1956). One of those grievances was the discharge of an individual employee.
[8] 129 FS 665 (DC Mass-1955).

Thus, this court has never determined that the district courts have jurisdiction to compel arbitration of a grievance, arising under a collective-bargaining agreement, involving an obligation running to an individual employee.

In this case at bar, the court below held that arbitration *per se* was a union remedy and that jurisdiction therefore existed under section 301. It is petitioner's position that the *General Electric* decisions require that the federal courts go one step further than this, and look to the nature of the grievance as to which arbitration is sought to be compelled.

In accord with the decision of this court in *Westinghouse Salaried Employees vs Westinghouse Electric Corp.*, and with the concurring opinion of Justices Burton and Harlan in *Textile Workers vs Lincoln Mills*, if the grievance is primarily of interest to an individual employee, the district court lacks jurisdiction under section 301.[9]

[9] Justices Burton and Harlan concurred specially, on the ground that "the District Court had jurisdiction over the action since it involved an obligation running to a union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a union". (353 U'S at 460). The third of the section 301 arbitration cases decided in June 1957 by this court, *Goodall-Sanford vs Textile Workers*, 353 US 550, like *Lincoln Mills*, involved an issue admittedly of primary interest to all the employees in the bargaining unit—survival of rights to fringe benefits for employees of a closed plant.

It is accordingly submitted that the case at bar appropriately presents an important undecided question, as to the scope of section 301 of the National Labor Relations Act, for determination by this court.

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APPENDIX

Opinion of the Court of Appeals

June 26, 1958

HUTCHESON, Chief Judge: This is an appeal requiring appellant to submit to arbitration the discharge of an employee, Ewing Poteet. It presents under a single specification of error:

> "The court below erred in granting judgment for the Guild, because it lacked jurisdiction to compel arbitration at the instance of the Guild of an individual grievance of Mr. Poteet under a collective bargaining agreement which had expired before arbitration was demanded."

two questions for review.[1]

Appellant recognizes that in three recent decisions,[2] the Supreme Court of the United States has held that Sec. 301 of the Labor Management Relations Act created a new area of federal substantive law; and that the court declared that in this new field of law, rules are

[1] "(1) Does a United States District Court have jurisdiction under Section 301 of the Taft Hartley Act, of a labor organization's action to compel arbitration of a dispute as to a grievance, not of the union as such, but of a single employee asserting violation of his individual rights under a collective bargaining agreement which provides for arbitration of union grievances?
"(2) May arbitration of a dispute arising under a collective bargaining agreement be compelled when the demand for arbitration has not been made until after the contract has expired?"

[2] Textile Workers Union v. Lincoln Mills, 353 U.S. 448; Goodall-Sanford v. Textile Workers, 353 U.S. 550; General Electric v. Local 205, 353 U.S. 547

to be devised by the federal courts to determine enforceability of collective-bargaining-contract clauses for arbitration of disputes arising between an employer and a labor organization. Arguing, however, that these decisions do not permit a union, as here to invoke federal jurisdiction under Sec. 301 to enforce arbitration of a grievance of one of the members of the union who has an adequate remedy of his own, and particularly that *Westinghouse v. Westinghouse*, 348 U.S. 437 has been neither overruled nor eroded, appellant insists that, under the teachings of that case, the district court was without jurisdiction, and the first question must be answered in the negative.

Answering the second question also in the negative and pointing out that Poteet was discharged on Feb. 20, 1957, and the contract in effect at that time expired by its own terms on April 10, 1957, appellant insisting that the controversy had come to an end and there was nothing left to litigate, cites in support *Patterson Parchment Paper Co. v. International Brotherhood*, 191 F(2) 252, a case whose facts and issues are entirely different from those here.

We think it plain that appellant, in arguing that the suit is within the prohibition of the Westinghouse case, has misunderstood the demand being made by appellee, has in short misconceived the nature of its suit, which was filed for the sole purpose of obtaining enforcement of a contract agreement between the Union and employer for arbitration, an agreement existing between union and employees and not employee and employer.

The court is not being asked to determine the propriety of Poteet's discharge or to afford him any remedy. Appellee simply requests that appellant perform its obligation which runs to the union and is therefore a union controversy and not one dealing with uniquely personal rights of employees.

Since the decision of the three cases above referred to, the question of whether a union can require an employer to proceed with its contractural obligation to arbitrate grievances is no longer in doubt, and this relief and no other is what is asked in the suit. The contract imposed upon the appellant, among others, the obligation to the union to discharge an employee only for just and sufficient cause, and it also imposed upon it the duty to arbitrate grievances which cannot be settled otherwise.

Appellee has taken the firm position that the discharge was not for such cause and has filed a grievance, as it had a right to do under the terms of the agreement. When the appellant refused to reinstate Poteet, as requested in the grievance, the union exercised its written contractual rights to have the question of whether Poteet was discharged for just and sufficient cause decided by an arbitrator.

In *Steel Workers v. Pullman-Standard*, 241 F(2) 547, which was a damage suit filed by an individual and the union to obtain for the individual a restoration of his pension rights, the court very clearly pointed out the difference between a union's asking for direct relief

for an individual and its seeking to require an employer to abide by the agreement to arbitrate. What was said there is peculiarly apposite here:

> "Collective bargaining agreements usually include provisions which regulate the procedure to be followed by the employer and the union inter sese in the handling of grievances and the solving of other labor problems which may arise in the future. Such regulations of the union management relationship in the administration of the process of collective bargaining are obviously a special concern of the Union as an organization, and in that sense, their enforcement is not a matter 'uniquely personal' to the individual employee. True, the subject matter in dispute may or may not be primarily personal to employees. Any agreed grievance procedure may cover controversies varying from wage disputes to questions of union recognition. But so long as the matter immediately in issue is an alleged obligation to arbitrate, or negotiate or follow some other procedure in administering the collective agreement, the union is directly and primarily concerned."

We think the district judge was right in holding that Ewing Poteet's discharge is an arbitrable issue and that the union is entitled to have an arbitration determine whether that discharge was for just and sufficient cause.

Largely for the same reasons appellant's second defense, that the contract has expired, also lacks merit.

If and when the agreement to arbitrate was breached, the union's cause of action to specifically enforce the agreement to arbitrate arose and continued unaffected by time until the breach of it was determined and compliance with it ordered.[3]

In addition, it appears that arbitration was requested during the term of the old contract under which the grievance arose. An agreement was not reached on the new contract which was to become effective April 11, 1957, until May 24, 1957, at which time the parties affixed their signatures. Arbitration was requested a second time on May 21, 1957, three days prior to the signing of and actual effective date of the new agreement. Between April 11, and May 24, 1957, the parties had in effect an interim agreement in which they agreed to maintain the terms and conditions of the old contract for an additional ninety days following April 11, 1957. Appellee was therefore entitled to arbitrate the Poteet grievance under the terms of the old, the extended, or the new agreement.

The judgment was right. It is AFFIRMED.

[3] Cf. Wilson Bros. v. Textile Workers, 132 F. Supp. 163; Kulikulminds Co. v. Amtorg Trading Corp., 126 F.2d 1[illegible]; R.F.C. v. Harison's & Crossfield, 204 F(2) 366; Albatross SS Co. v. Maning Bros., 95 F. Supp. 459; Petition of Provoust Lefebre of R.I., 105 F. Supp. 757. Lane v. Enditt-Johnson, 299 N.Y. 725, 87 N.E.(2) 450.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, The Item Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.